

In the Matter of the Reconstruction of)
 CTH "H" on Property Owned by) Case No. 95-H-939
 Dr. R.C. Samanta Roy in Shawano County.)

By letters dated September 19, 1995 and November 17, 1995, John M. Maas, P.E., on behalf of Dr. R.C. Samanta Roy (Petitioner), requested the Division of Hearings and Appeals conduct a contested case hearing to review actions by the Wisconsin Department of Transportation related to the reconstruction of County Trunk Highway H on property owned by the Petitioner in Shawano County. On December 12, 1995, the Wisconsin Department of Transportation filed a Motion to Dismiss the request for a hearing.

As a basis for his request for a contested case hearing, the Petitioner cites §§227.42(1)(a) and (d), Stats. This statute provides that a person has a right to a contested case hearing if "a substantial interest of the person is injured in fact or threatened with injury by agency action or inaction" or "there is a dispute of material fact." The request for a hearing states that Dr. R.C. Samanta Roy will be "severely injure[d]" by the Department of Transportation's plan for reconstruction of CTH H. However, even assuming this is the case, the Division of Hearings and Appeals is not the appropriate agency to conduct a contested case hearing in this matter.

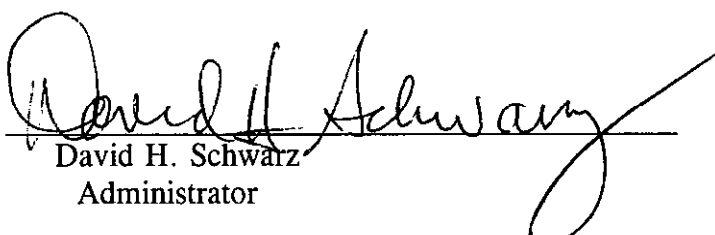
The Division of Hearings and Appeals has specific, limited jurisdiction with respect to contested case hearings involving actions by the Wisconsin Department of Transportation. Section 227.43(bg), Stats., lists the specific statutes over which the Division of Hearings and Appeals has jurisdiction to conduct a contested case hearing. The Petitioner cites none of the statutes listed at §227.43(bg), Stats., nor does it appear that the Petitioner's request for a hearing would fall within the scope of any of the statutes listed. Alternatively, §227.43(br), Stats., requires the administrator of the Division of Hearings and Appeals to assign a hearing examiner to preside over any hearing of a contested case which is required to be conducted by the Department of Transportation and which is not conducted by the Secretary of Transportation.

If the Secretary of the Department of Transportation granted the request for a contested case hearing, the Secretary could then request the Division of Hearings and Appeals to conduct the hearing. Jurisdiction in such a matter can only be granted by the Secretary of the Department of Transportation at his discretion. The Division of Hearings and Appeals has no statutory authority to conduct such a hearing unless requested by the Secretary of the Department of Transportation. The Division of Hearings and Appeals has no independent authority to conduct a contested case hearing in this matter. Accordingly, the request for contested case hearing filed by John Maas on behalf of Dr. R.C. Samanta Roy is dismissed.

Dated at Madison, Wisconsin on March 15, 1996.

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By


David H. Schwarz
Administrator